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situation demands, and to arrive at a solution which will be fundamentally correct and just to all parties concerned. The most that can be hoped for is a satisfactory compromise, not substantial justice. The report is chiefly valuable, not for the decision reached, nor for the data submitted and considered, nor for the reasons invoked in support of the findings, nor for the possible permanency of the award, but for the point of view which it suggests to the reader—the serious possibilities of the present system, the inadequacy of legislation now in force, and the need of a better correlation of the interests of labor, capital and other members of society in the operation of industry.

B. WALTER KING

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Power of the Federal Judiciary over Legislation. By J. HAMPDEN DOUGHERTY. New York & London: Putnam, 1912. 8vo, pp. viii+125. \$1.50 net.

This little book is one of a number lately published treating the questions involved in the judicial power of declaring laws unconstitutional. It is rather a popular propaganda monograph against the doctrines of the recall of judges and judicial decisions than a scholarly treatise on its given subject.

The author apparently assumes that the only reason for the agitation for the recall of judges or decisions is the excessive use or abuse of the power to declare laws unconstitutional. Hence he seeks to show that this judicial power to declare laws unconstitutional was known in other countries before it was adopted in the United States, that it was intentionally and *expressly* given to the courts in the Constitution by the founders, and that it has worked well on the whole. Finally the author gives a few modifications which, he thinks, will eliminate whatever faults have crept into our practice of declaring laws unconstitutional.

On the question of whether the practice of allowing the courts to declare legislative acts unconstitutional exists or existed in other countries or systems of jurisprudence, the author makes no pretense at authoritative study of the sources; but gives general quotations from other writers which, he contends, show this practice was known in other countries. No distinction is drawn by the author between the power of a court to declare unconstitutional the legislative acts of a subsidiary state and the power of holding void the acts of a co-ordinate legislative body. Of the former power there are instances in other countries; of the latter, it is practically agreed among students of the subject, there are

none. Our federal courts exercise both powers and it is especially the latter which has been designated as "usurped" and the exercise of which by state and federal courts has met with criticism.

That the power to declare laws unconstitutional was given *expressly* the author seeks to prove from the clause of the Constitution making the Constitution and laws made in pursuance of it the supreme law of the land, together with the judiciary clause, which gives the federal courts jurisdiction of all cases "arising under this Constitution," etc. It is a perversion of the meaning of the word, especially in its legal sense, to say that this is an *express* grant of the power. It may be an implied grant of the power to the federal courts to declare state laws unconstitutional, but it does not even furnish an implication of the power to deal in this way with laws of Congress. That the founders intended the courts to have this power has been quite conclusively established from the debates in the convention, and the author shows it by the same means.

The proof that the power to declare laws unconstitutional has been well used by the federal courts consists largely in declamatory praise of these courts. The remedies suggested for any ills that may have sprung up in the system of declaring laws unconstitutional are the oft-advanced expedients (1) of requiring unanimous decisions to declare laws unconstitutional, (2) of permitting a rehearing to the state through its attorney-general, who would express the will of the people, in every case in which a statute is declared unconstitutional; and the further proposal of a change in the federal statute governing appeals from state courts so that an appeal might be had to the United States Supreme Court in every case in which a state law was claimed to violate the federal Constitution. At present appeals are given only when the state court has decided in favor of the state law.

As a scientific work the book loses on account of its extremely argumentative style; as a popular argument against the recall of judges it covers only a small part of the ground.

A. W. RICHTER

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Valuation of Public Service Corporations: Legal and Economic Phases of Valuation for Rate Making and Public Purchase.
By ROBERT H. WHITTEN. New York: Banks Law Publishing Co., 1912. 8vo, pp. xl+798. \$5.50.

This book contains the best discussion of topics within its field known to the writer of this review. Moreover, it is a model of the method of